APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/290,149	04/12/1999	TODD D. ALLECKSON	10990978-1	9522

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EXAMINER
RIMELL, SAMUEL G

ART UNIT	PAPER NUMBER
2175	

DATE MAILED: 07/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

-- The MAILING DATE f this communication appears on the cov r sheet with the correspondence address --

Period for R ply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____ .

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1,3-5,7-17,19 and 21-32* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1,3-5, 7-17, 19, 21-32* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121

SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

Preliminary Note: This office action is not made final.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 3-5, 7-17, 19, 21-32 are rejected under 35 U.S.C. 102(e) as being anticipated by

Brown (U.S. Patent 5,832,448).

Claim 1: FIG. 1 of Brown discloses an arrangement where digital data is received at a

clinical server (12) from patient sites (36, 46). The digital data is processed so as to produce the

output screens (26). The data displayed on the output screens includes clinical statistics (blood

glucose values) and administrative statistics (the names of the patients, the dates of data receipt

and the completeness of the data). The clinical server (12) provides access to the data by one or

more clinicians). The protocol for communicating the data between the patients and the

physicians may inherently be Internet protocol, particularly as the data is communicated over a

telephone network using standard modems. The output screen (26) is actually a series of

hierarchical output screens. The output screens can be hierarchically arranged by patient group,

date of data collection, or individual patient being viewed. Each screen may represent a "higher"

or "lower" hierarchical level, although the claims do not state what exactly constitutes a "higher"

level or "lower" level. Statistics from 10 patients are collected and presented on chart (26). The

physician can further select or flag patients. These flagged patients are indicated by the dotted

circle (72), and are compiled in a list, shown by list box (70). The flagged patients shown in

display (26) have a health parameter outside of a preset range, namely, that their data is more than 20 days old.

<u>Claim 3-4:</u> As seen in screen (26), the digital data from the patient has an associated time scale, and the absolute time of measurement events is determined and displayed on the on the chart (26).

<u>Claim 5:</u> The system derives data from a plurality of patients. The time scale of the data is determined and displayed.

<u>Claim 7:</u> When the data is flagged in display (26) the patient has a health parameter with at least functional parameter that is out of a desired range.

<u>Claim 8:</u> Statistics are continually received from patients over time, and thus continually updated.

<u>Claim 9:</u> The clinician may select patients that have been flagged to appear on a printed list or receive messages. The physician can access clinical information by reviewing the display (26).

<u>Claim 10-11:</u> The collection of data over a period of days, as in display (26) presents a series of historical data.

<u>Claim 12:</u> Statistics are presented on the devices and flags of health parameters.

<u>Claim 13:</u> The users of the system of FIG. 1 have different levels of access. Patients cannot access the data sent to the clinician.

<u>Claim 14:</u> See remarks for claim 1.

<u>Claim 15-16:</u> See remarks for claims 3-4.

<u>Claim 17:</u> The system includes a master patient database (18) which includes a memory.

Claim 19: See remarks for claim 1.

Claim 21: See remarks for claims 10-11.

Claim 22: Items can be selected for graphical display, such as date of collection, name of patient, and patient group.

Claim 23: See remarks for claim 8.

Claim 24: See remarks for claim 1.

Claim 25: See remarks for claim 22.

Claim 26: The administrative computer is the server (12). The clinician computer is the clinician workstation (22).

Claims 27-28: See remarks for claims 1 and 3.

Claim 29-32: As seen in viewer (26) the name of a specific patient is selected. Particular data for the patient is flagged by a dotted line. The date of flagging is indicated by the date indicated in the top right corner. The reason for flagging is due to sparse or non-compliant data. The patient's telephone number would inherently be located in the master patient database, and being in this database, retrievable by the clinician.

Remarks

Applicant's arguments is reference to the above mentioned claims have been considered. However, Examiner maintains the application of the Brown reference.

Claims 1, 14, 27 and 28 have each been amended to include essentially the same feature. These claims have been amended to recite the processing of statistics and the compiling of a list of flagged patients who display unusual health parameters. Examiner maintains that Brown teaches these exact features. Reference is made to group overview chart (26). Brown shows the

compilation of health statistics which are presented as icons. Statistics collected from the patients are processed by the system and result in a display showing certain patients having non-compliant data. The physician can then select, or flag patients, represented by the dotted circles (72). Each of the flagged patients in display (26) have a health parameter outside of a pre-set range, namely, they have data that is more than 20 days old.

Applicant argues that in Brown, the flagged data does not result from the statistical processing, but rather, result from manual action by the physician. While this is true, the claims make no requirement that the flagging be the result of some statistical processing. The claims only state that the statistical processing occurs and that the flagging occurs. The claims do not state what causes the flagging to occur and do not exclude a manual flagging by the physician.

Nonetheless, even if applicant were to claim this correlation between the statistical processing and the flagging, the claims would still not distinguish from Brown. In the Brown reference, the chart key (68) illustrates other forms of flagging, such as creating dotted diamond icons which represent a flagging of a data point based upon statistical processing. The set of flagged data points on the chart (26) could thus be read as the listing of flagged patients.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.

Sam Rimell
Primary Examiner
Art Unit 2175